

are required to "list" newly submitted claims that are readable on an elected species, otherwise any response is non-responsive to a prior Office Action of the Examiner; or if the above Office Action is contending that newly submitted claims 30-33 are not readable on the elected species of Figs. 2d and 3b. Under either interpretation, Applicants object to this procedure as it reduces the enforceable term of Applicant's ultimate patent and is clearly inconsistent with examination guidelines set forth in the MPEP.

To the extent that the above Office Action contends that Applicant is required to "list" claims added after an election as being drawn to the elected species, Applicants respectfully note that pages 4, 7 and 8 of Applicants Amendment discuss the limitations of the newly added claims, and make it clear that the newly added claims are readable on the elected species. Moreover, the mere presentation of new claims after an Office Action clearly constitutes a "listing" of those claims as readable on the examination of the invention under review, including an elected species. In fact, MPEP §821.03 makes it clear that a holding of "non-responsive" is only permissible where, in addition to presenting new claims drawn to a different invention than examined, Applicants also cancels all claims drawn to the invention which was examined. See, MPEP §821.03. Hence, MPEP §821.03 makes it clear that adding new claims, even if they were drawn to a new invention, does not violate 37 CFR §1.111(b) unless all of the claims which were examined have also been cancelled. Applicants have not cancelled any claims by the response filed September 16, 2002, and hence the addition of new claims does not justify a holding of non-responsive.

Should the Examiner disagree that the newly presented claims are not readable on the elected species, the proper procedure is to withdraw such newly presented claims as being drawn

to a non-elected invention and to examine the remainder of the claims on their merits. See, MPEP §821.03.

Having fully and completely responded to the Office Action, Applicants submit that all of the claims are now in condition for allowance, an indication of which is respectfully solicited. If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, the Examiner is requested to call Applicants' attorney at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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